

CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE:

Request that the City Join Amicus Brief in the case of **Brewer v. City of Napa**, Ninth Circuit Court of Appeals, Case No. 98-16460.

MEETING DATE:

September 15, 1999

PREPARED BY:

City Attorney

RECOMMENDATION:

That the City join the Amicus Brief in the case of **Brewer v. City of Napa**, Ninth Circuit Court of Appeals, Case No. 98-16460.

BACKGROUND:

Amicus Briefs are filed in various actions which involve matters of wide ranging concern to provide information and additional argument to the court in order to assist the court in understanding all of the issues and arrive at a conclusion.

This case involves a plaintiff who was apprehended with the aid of a police dog and injured during the apprehension when he fought with the dog. To date the City of Napa has prevailed at trial, a jury finding that the amount of force used on the plaintiff was reasonable. As you can see however, the plaintiff has appealed this jury verdict through his attorney's Robert Mann and Donald Cook. These two lawyers have a regular practice of trying cases on behalf of criminals who are apprehended by police dogs.

This particular lawyer team as a routine course in these trials, seeks to introduce photographs and videotapes of dog bites that have occurred in other jurisdictions and are not representative of the case that they are trying at the particular time. In this matter, the trial court ruled that the evidence that was trying to be introduced was irrelevant and the court excluded it. This package of material seems to be aimed solely at inflaming the passions of a jury with what a police dog might have done thereby drawing attention away from the actual injuries in any particular case. This package of materials with minor variations have been offered by this lawyer team in at least six different federal court cases in the last two years.

This amicus brief on behalf of the City of Napa and sanctioned by the California League of Cities will take the position that the Ninth Circuit should rule that this evidence is inadmissible as a matter of law and should be excluded from all cases arising from the use of a police service dog. Since the City of Lodi has a Canine Unit it is appropriate for this City to join in such a brief.

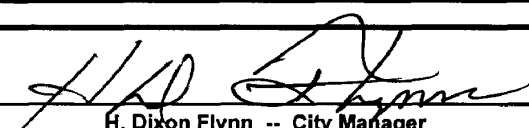
FUNDING: Not applicable.

Respectfully submitted,



Randall A. Hays, City Attorney

APPROVED: _____



H. Dixon Flynn -- City Manager